

1 05-10-PHR

BEFORE the ARIZONA STATE BOARD of PHARMACY

2 In the Matter of:

3 KEVIN DENICK,

4 Holder of Pharmacist License

5 Number 8392

6 In the State of Arizona

7 Respondent

)
) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW,**
) **AND BOARD ORDER**
) **NO. 05-10-PHR**
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11 Pursuant to Notice of Hearing Number 05-10-PHR ("Notice") this matter came before the
12 Arizona State Board of Pharmacy ("Board") on November 17, 2005.

13 Linda McCoy, president, presided with members Zina Berry, Chuck Dutcher, Louanne
14 Honeyestewa, Dennis McAllister, Ridge Smidt, Paul Sypherd, Bryan Tippet and Tom Van
15 Hassel in attendance.

16 The State was represented by the Office of the Attorney General, Roberto Pulver,
17 Assistant Attorney General, Licensing and Enforcement Section. Christine Cassetta, of the
18 Solicitor General's Section of the Attorney General's Office was present and available to provide
19 independent legal advice to the Board.

20 KEVIN DENICK (Respondent) was present and was not represented by an attorney.

21 The Board, after considering the evidence presented, hereby issues the following
22 Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

23 1. The Board is the duly constituted authority for the regulation and control of
24 the practice of pharmacy in the state of Arizona, under A.R.S. § 32-1901, et seq.

25 2. KEVIN DENICK is the holder of pharmacist license Number 8392, which

1 allows him to engage in the practice of pharmacy in the state of Arizona.

2 3. On June 20, 2002, under Board Order number 02-07-PHR,
3 Respondent's pharmacist license was suspended for approximately ten months and
4 then placed on probation for a period of five (5) years, and Respondent also entered
5 into a concurrent Pharmacists Assisting Pharmacists in Arizona (PAPA) contract, for
6 the following violations:

7 A. On October 29, 2001, the Director of Pharmacy Administration
8 and Compliance for Safeway Inc., notified Board staff by letter that Respondent had
9 admitted to him that he took, from Safeway pharmacy #0253, a controlled substance,
10 namely Tussionex® suspension. The Safeway pharmacy personnel filed a DEA-106
11 Form, a Report of Theft or Loss of Controlled Substances, as required by Arizona and
12 federal statutes for the missing Tussionex®. Further, hydrocodone, the active
13 ingredient in Tussionex® suspension, is a Class III Controlled Substance and was
14 dispensed by Respondent without valid prescriptions. Respondent also admitted to
15 Safeway personnel that he had entered "false" prescriptions into the computer system
16 in an attempt to "cover up" the loss of the Tussionex®. These prescriptions were
17 transcribed and dispensed by Respondent for Tussionex® as well as various
18 prescription-only drugs.

19 B. On January 4, 2002, a Board Compliance Officer audited the
20 Tussionex® suspension at Safeway pharmacy #0253 and determined that there was a
21 shortage of 1,717 milliliters of Tussionex® suspension from May 1, 2001 to January
22 4, 2002.

23 C. Additionally, the Board Compliance Officer obtained copies of
24 the false controlled substance and prescription-only prescriptions and after contacting
25 the alleged prescribers, determined that the following prescriptions were not valid:

1 i. On or about August 29, 2001, Respondent dispensed from
2 Safeway Pharmacy #0253, thirty (30) Claritin® 10 mg. tablets, a prescription-only
3 drug, and 240 ml. of Tussionex® suspension, a Class III Controlled Substance.

4 ii. On or about September 2, 2001, Respondent dispensed a 17 Gm.
5 albuterol inhaler, a prescription-only drug, and 180 ml. of Tussionex® suspension, a
6 Class III Controlled Substance.

7 iii. On or about September 12, 2001, Respondent dispensed ten (10)
8 cephalexin 500mg. capsules and a 17 Gm. albuterol inhaler, both prescription-only
9 drugs, and 240ml. of Tussionex® suspension, a Class III Controlled Substance.

10 iv. On or about September 24, 2001, Respondent dispensed from
11 Safeway Pharmacy #0253, 240 ml. of Tussionex® suspension, a Class III Controlled
12 Substance.

13 4. On April 22, 2005, Respondent admitted to a Board Compliance Officer
14 that he created a new prescription number 4515706 at Bashas' Pharmacy #76, located
15 at 2840 S. Alma School Road, Chandler, Arizona based on a fictitious transfer of
16 prescription information for patient R.B. from Fry's Pharmacy #05, located at 7770 E.
17 Mc Dowell Road in Scottsdale, Arizona. The drug dispensed pursuant to the fictitious
18 transfer was hydrocodone with APAP 5/500 mg., sixty (60) tablets., a Class III
19 Controlled Substance, as defined in A.R.S. § 36-2514 and 21 C.F.R. § 1308.13.
20 Additionally, the prescription was not eligible for transfer from Fry's Pharmacy #05
21 because it was all ready a transfer from Walgreen's Pharmacy #3163 and the original
22 prescription was for hydrocodone w/APAP 5/325mg. The conduct described in this
23 paragraph is a violation of A.A.C. R4-23-407(D).

24 5. On April 22, 2005, Respondent also admitted to a Board
25 Compliance Officer that he created a fraudulent prescription for thirty (30)
hydrocodone w/APAP 5/500 mg. tablets for patient S.B. without a valid

1 prescription. The prescription was entered into Bashas' Pharmacy # 76 as
2 number 4515705. Respondent told the Board Compliance Officer that the
3 patient's mother, patient R.B., would obtain a valid prescription for Respondent
4 within one week. The conduct and circumstances described in this paragraph
5 constitutes violations of A.R.S. § 32-1968(A), A.R.S. § 36-2525 and 21 C.F.R.
6 § 1306.21.
7

8 6. On April 22, 2005, Respondent further admitted to a Board Compliance
9 Officer that he created a fraudulent prescription for forty (40) hydrocodone w/APAP
10 5/500 mg. tablets for patient I.N. (mother of patient R.B.) without a valid
11 prescription. The prescription was entered into Bashas' Pharmacy # 76 as number
12 4515705. Respondent told the Board Compliance Officer that the patient's daughter,
13 patient R.B., would obtain a valid prescription for Respondent within one week. The
14 conduct and circumstances described in this paragraph constitutes violations of A.R.S.
15 § 32-1968(A), A.R.S. § 36-2525 and 21 C.F.R. § 1306.21.

16 7. As an aggravating factor in determining Respondent's discipline, if
17 found to have committed unprofessional conduct under this Complaint, is that
18 Respondent's pharmacist license, on October 15, 1998, was suspended for two years
19 and six months, the suspension was stayed and Respondent's license was placed on
20 probation for the same period of time for the following violations:

21 A. From May 8, 1996 to June 2, 1998, Respondent, while employed
22 as pharmacist-in-charge at Albertson's Pharmacy #942, failed to account for 3,692
23 dosage units of Acetaminophen w/Codeine 30 mg. tablets.

24 B. From May 8, 1996 to June 2, 1998, Respondent, while employed
25 as pharmacist-in-charge at Albertson's Pharmacy #942, failed to account for 81
dosage units of Tylenol #3 tablets.

1 C. From May 8, 1996 to June 2, 1998, Respondent, while employed
2 as pharmacist-in-charge at Albertson's Pharmacy #942, failed to account for 2,433
3 dosage units of Acetaminophen w/Codeine 60 mg. tablets.

4 CONCLUSIONS OF LAW

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6 8. The conduct and circumstances in paragraphs 3 through 6 above constitute violations
7 of Board Order Number 02-07-PHR, under A.R.S. § 32-1927(A)(17) to wit:

8 A.R.S. § 32-1927(A)(17): The license of any pharmacist, or pharmacy
9 intern or graduate intern may be revoked or suspended or a pharmacist
10 or intern may be placed on probation by the board if:

11 The licensee violated a formal order, terms of probation, a consent
12 agreement or a stipulation issued or entered into by the board or
13 its executive director pursuant to this chapter.

14 9. The conduct and circumstances described in paragraphs 3 through 6
15 above constitute grounds for disciplinary action under A.R.S. §§ 32-1927(A)(10), 32-
16 1927(A)(16) and 32-1927(B)(2) to wit:

17 A.R.S. § 32-1927(A)(10): The license of any pharmacist,
18 pharmacy intern or graduate intern may be revoked or suspended
19 or a pharmacist or intern may be placed on probation by the
20 board if:

21 The licensee is found by the board to be guilty of violating any
22 Arizona or federal law, rule, or regulation relating to the
23 manufacture and distribution of drugs and devices, or the
24 practice of pharmacy.

25 A.R.S. § 32-1927(A)(16): The license of any pharmacist,
pharmacy intern or graduate intern may be revoked or suspended
or a pharmacist or intern may be placed on probation by the
board if:

The licensee violated or attempted to violate directly or
indirectly, or assisted in or abetted the violation of or conspired
to violate this chapter.

A.R.S. § 32-1927(B)(2): The license of any pharmacist or intern
may be revoked or suspended or the pharmacist, pharmacy intern
or graduate intern may be placed on probation or censured and a
civil penalty of not more than one thousand dollars [\$1000.00]
for each offense may be imposed by the board if the licensee:

1 Is found by the board, or is convicted in a federal or state court,
2 of having violated federal or state laws or administrative rules
3 pertaining to marijuana, prescription-only drugs, narcotics,
4 dangerous drugs or controlled substances.

5 10. Based on the Findings of Fact and Conclusions of Law, it is ordered that the
6 pharmacist license number 8392 issued to KEVIN DENICK, is hereby **REVOKED** and
7 Respondent shall surrender said permit to the Board.

8 11. Respondent is hereby notified that he has the right to petition for a rehearing or
9 review. The petition for rehearing or review must be filed with the Board within thirty (30) days
10 after service of this Order and must set forth legally sufficient reasons for granting a rehearing or
11 review. A.R.S. §§ 41-1092.09, A.A.C. R4-23-128. Service of this order is effective five (5) days
12 after date of mailing. If a motion for rehearing or review is not filed, the Board's Order becomes
13 effective thirty-five (35) days after it is mailed to Respondent.

14 12. Respondent is further notified that the filing of a motion for rehearing or review is
15 required to preserve any rights of appeal to the Superior Court.
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DATED this 17th day of November, 2005

ARIZONA STATE BOARD OF PHARMACY

SEAL

By: 

Hal Wand
Executive Director

Copies of the foregoing Findings
of Fact, Conclusions of Law and
Board Order sent by Certified Mail
this 2nd day of December, 2005 to:

KEVIN DENICK,
6902 E. Continental Drive
Scottsdale, AZ 85257
Respondent

and by Courier Mail to:

Roberto Pulver
Assistant Attorney General
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007
Attorney for the State

and

Christine Cassetta
Assistant Attorney General
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